

**ZONING BOARD OF APPEALS  
MONDAY, JUNE 24, 2013**

Members Present: Susan Marteney, Scott Kilmer, Richard Tamburrino, Edward Darrow

Staff Present: Andy Fusco, Corporation Counsel

**APPLICATIONS APPROVED:** 5 Norma Dr., 86 Bradford St.

**APPLICATIONS DENIED:** None

**APPLICATIONS TABLED:** 98 E. Genesee St., 108 South St.

Mr. Darrow: Welcome to the City of Auburn Zoning Board of Appeals. I'm Board Chairman Edward Darrow. Tonight we will be hearing, in this order, 5 Norma Dr., 86 Bradford St., 98 E. Genesee St. and 108 South St.

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**5 Norma Dr. Area variance for shed placement in the side yard.**

5 Norma Dr. please approach, state your name and address for the record and tell us what you'd like to do.

Dave Guarino: We've been here for 27 plus years. We've always had a shed in the position it is right now, in the side yard. It's been there since we lived there. I knocked down the old Sears aluminum shed that was completely rusted out and had another shed brought in by the Amish people from Seneca County. They rolled it off their truck and in its place. I never thought I needed a building permit since it was already built. It's been there 10 – 12 years and it's never been noticed because the neighbors had always had pine trees it sat behind. The Millers next door had all the pine trees removed. Now the shed shows up. It's in brand new condition; it's not an eyesore to the neighborhood. I've dropped off letters from three of my neighbors; one next door, the Millers, and two across the street. They have no problems with it. The pine trees were cut down late last summer. We're just about ready to plant shrubbery and do some exterior décor to the shed and then I got the notice that I built a new shed which it wasn't built, it was brought in 12 years ago. I'm asking for a variance to keep it in its location because there's really no other place I can locate it. My backward goes up a sharp incline. I'd have to clear out a generous amount of land to tuck it into the back yard.

Ed Darrow: Do we have any questions from Board members?

Richard Tamburrino: Is it the same size as the old one?

Dave Guarino: The old one Sears shed was probably 8 x 10, this one is 8 x 12. As I said it's in brand new condition.

Scott Kilmer: I think it's important you brought the letters from the neighbors especially the one where one neighbor counts on this as a privacy issue for them.

Dave Guarino: Yeah. Scott, you're familiar with the area. The neighbors built a pool in the back and they stated they will lose their privacy if we move the shed.

Scott Kilmer: I appreciate the fact that your back yard grades up.

Dave Guarino: It goes probably 5 ½ to 6 feet high within a 15 foot depth.

Edward Darrow: Any other questions from Board members? You may be reseated at this time but we may recall you. Is there anyone present wishing to speak for or against this variance? Seeing none and hearing none I will close the public portion so we can discuss it amongst ourselves.

Richard Tamburrino: It is a nice shed, it's been there for years, I see no problem with it.

Susan Marteney: Why is it a problem after 12 years anyway?

Ed Darrow: It was replaced.

Susan Marteney: But 12 years ago.

Ed Darrow: Oh, 12 years ago it was replaced. I misunderstood him. I thought the other shed was 12 years old.

Richard Tamburrino: It was noticed is all.

Ed Darrow: Chair will entertain a motion.

Scott Kilmer: I'd like to make a motion to grant Dave and Ann Guarino of 5 Norma Dr. an area variance for the placement of an 8 x 12 shed on the side of their yard.

Seconded by Richard Tamburrino.

We have a motion and a second.

Roll call vote. Motion carried unanimously.

Your variance has been approved. Thank you.

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### **86 Bradford St. Area variance for front yard parking**

Chair: Next we have 86 Bradford St. If you could please approach. Give us your name and address for the record and then tell us what you'd like to do.

Nancy Quill: I'd like to install front yard parking. Right now I just have a single driveway. I have a teenage driver who now has her own vehicle. Unfortunately I didn't know at the time I purchased the house 7 years ago the property line runs about 2/3 down the middle of the driveway and my neighbor has been gracious enough to let me continue parking on his property but I would like to install the front yard parking and create a double driveway.

Susan Marteney: It looks on the map you're going to move the furthest west side back to your property line then?

Nancy Quill: Right. So my driveway is on my property and it's not an issue in the future.

Susan Marteney: And then you're going to essentially usurp what's now the sidewalk?

Nancy Quill: Right. I have a private walk way.

Susan Marteney: So you are moving the current driveway and removing the private sidewalk?

Nancy Quill: And I'll replace the public walkway that's there and put the curb cut in.

Scott Kilmer: So your driveway will extend into what is now yard right?

Nancy Quill: Right. Which is in front of my enclosed porch.

Scott Kilmer: It'll not only take the sidewalk but it will go further east.

Richard Tamburrino: The side of the drive will be collinear with your front porch right?

Nancy Quill: Right. It'll be in front of my enclosed porch not my actual structure.

Ed Darrow: In the photograph you submitted marked 2012 you're saying then that half of that driveway that's there really isn't your driveway?

Nancy Quill: I would say about 2/3 of it is mine and then the pin starts 1/3 and goes up. Apparently the people who built the house were brothers and used to share a car and share a buggy.

Ed Darrow: So does your fence go onto your neighbor's property then that's in front of your garage coming off your side porch there? Your fence, that goes on your neighbor's property?

Nancy Quill: Yes. That's all on my neighbor's property. It's kind of crazy.

Chair: Any other questions from Board members. You may be seated. We may recall you thought.

Board member: There's double driveways, I understand, a lot of houses with them. My house is a double driveway because the realty is people don't have one vehicle, they have two.

Chair: Is there anyone present wishing to speak for or against 86 Bradford St.?

Please come forward and give your name and address for the record.

Bill Stanzak, 84 Bradford St.: I'm the property adjacent to hers. I have no objections to the widening of the driveway. I have not seen any drawings or sketches or anything just to see how it's going to end up on the property line. At this time right now she's, as we've discussed, over on my property line. I'm just curious to see how that's going to get resolved.

Ed Darrow: Her drawing, if you can visualize it, is going to go in front of her porch that's been enclosed.

Sue Marteney shows him the map and explains what is being done.

Bill Stanzak: Again, it was mostly curiosity to see how it's going to get done but I have no objections at all.

Chair: Is there anyone else wishing to speak for or against 86 Bradford St. Seeing none and hearing none I shall close the public portion so we can discuss it amongst ourselves.

Richard Tamburrino: I don't see an issue with it. I think there are a lot of double driveways.

Ed Darrow: It is minimal in my mind how much it's going over. First you think front yard parking and we think in front of the house but it's in front of the porch.

Susan Marteney: It's barely in front of the house, it won't obscure it.

Ed Darrow: And it keeps a car off the street.

Board member: What she takes out of her front yard the neighbor gets back in his. Then they'll work out the fence issue.

Ed Darrow: The Chair will entertain a motion.

Richard Tamburrino: I'd like to make a motion that we grant Nancy Quill of 86 Bradford St. an area variance for front yard parking for off street residential parking.

Seconded by Susan Marteney.

Roll call vote. Motion carried unanimously.

Your variance has been approved. Please see Codes for any necessary permits. Thank you.

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### **98 E. Genesee St. Area variance for driveway and parking.**

Chair: Next we have 98 E. Genesee St. if you could please approach and give your name and address for the record.

Gloria Wristen: Basically the variances we are requesting amount to grandfathering in the parking lot that has been there for about 40 years. I've continuously owned the property since May of 1983 so for 30 years I've owned the property. When I purchased it the driveway was already there and because I was going to have my accounting firm there I was told I needed to have 6 parking spaces which it already had. So all I'm asking is really to grandfather in what I've had for 30 years and for 10 years before me at least.

One of the things when I bought the property the neighbors were concerned that maybe having an accounting firm there was going to cause parking problems on the street. I've never had a complaint about that but now with alternate side parking and with the changes from the DOT we've lost about 4 parking spots on the street and if we don't get this variance we've lost 3 parking spots in our driveway so now it would be a real inconvenience to the neighborhood if I can't have the parking lot there. They are the ones that would really be hurt the most.

Ed Darrow: I have a question for Mr. Hicks; if this is a pre-existing non-conforming why is it here?

Brian Hicks: It is being restructured. Any new configurations need to comply with Code. A set back of the asphalt is required.

Ed Darrow: Any questions from the Board members?

Scott Kilmer: On the part your parking lot presently that has the new pavement on it there's about a four or five foot strip that's not paved.

Gloria Wristen: It's about 8 or 9.

Scott Kilmer: You're waiting to pave that based on the variance?

Gloria Wristen: Right. The City said I couldn't complete that.

Scott Kilmer: Otherwise your parking lot would end where the pavement ends now.

Gloria Wristen: Right. And there could be no diagonal parking there so clients couldn't park at an angle in there.

Board member: I believe there's an existing fence there at the edge of your parking lot.

Gloria Wristen: Yes.

I gave you quite a few photos showing the reduction of parking on the street and now with alternate side parking on E. Genesee St. and I did check with the person who gives tickets to make sure we are really alternate side on E. Genesee because it's never been that way and he said definitely we're alternate side on E. Genesee now. It's never been that way before even in the winter but now unless you have a sign that it's not alternate side then it is. He has given tickets to people with apartments in the neighborhood. So people with apartments in the neighborhood would really like to see those spaces be there for their tenants and not for my clients.

Chair: Any other questions from Board members at this time? You may be seated but we may recall you. Is there anybody else present wishing to speak for or against 98 E. Genesee St.

Please approach and state your name and address for the record.

William Walker, 96 E. Genesee St.: My house is right next to the Wristens. I have a whole statement prepared. My main objection to this, since we moved in there it's all black top, all parking lot, all the water is being directed through gutter systems and the way the parking lot is constructed towards my property. I have water in the basement due to this. I'm asking for some green space to be considered along our side of the fence because when the parking lot is plowed it's plowed into my fence. It bends my fence and my wife put a bunch of plants in

there and it goes directly into that. I think if there was green space in that area it may alleviate some of that as well as the water draining off the house. I've had several issues with Mr. Wristen did this without a permit. He went in there, ripped out the parking lot, attempted to put it all in and luckily was stopped. I'd like the Board to consider that as well. He went over the tops of the roots of a 100 year old tree right there. I don't see, I live right next door to them, I don't see a lot of cars going in there as a business. He says they need the parking lot, I don't see it. There's plenty of parking on the street. His clients have always walked across my property going in to his office. That's the way it's been. That doesn't bother me. But the green space bothers me. It is a residential area; it should remain as such from now on. That's all I have to say.

Board member: I'm sorry, what's the address of your property again?

William Walker: 96 E. Genesee St.

Board member: So you're on the western side of her property. So the parking lot is draining down into your property.

William Walker: Well the gutter systems are draining that way. Actually I and my wife put a ditch in, a drainage ditch, because there was so much water. Once the ground got saturated it would go right across the ground and into the basement. We built up the edge of the foundation as well as putting in a ditch right on the fence line right next to the black top to prevent it from flowing right past it. We have plants right along that fence and I think they should have some plants in there as well.

Ed Darrow: Sir, when you say the gutter system drains, you're referring to the roof gutters or is it a separate gutter system on the ground?

William Walker: The roof gutters.

Ed Darrow: Thank you. Any other questions?

William Walker: As well as the black top it is pitched toward my property.

Ed Darrow: Thank you, you may be seated. Is there anyone else wishing to speak for or against 98 E. Genesee St.?

Mrs. Wristen could you please re-approach? At this time I'd like you to know this is a seven member board. One no vote and it's down. You cannot reapply unless there's a substantial change. So it's customary when it's this short of a board I always offer the chance to table until the next session which would be next month. So at this point and time after taking testimony from your neighbor if you would like to table to the next session you may do so.

Gloria Wristen: You're saying if we get one no vote then we can't even reapply.

Chair: That is correct. We have to have four yes votes. Even though it's a seven member board it's not the majority of those present, it has to be four.

Gloria Wristen: I guess we'll table.

Chair: Okay then. I'll accept a motion that we table 98 E. Genesee St.

So moved by Scott Kilmer.

Motion carried unanimously.

Susan Marteney: I just have a question. There are parking lines marked on E. Genesee St. to indicate that one would park on the street and I don't think in any other residential areas that indicated, which would preclude alternate side parking. It seems strange to me that it's marked that there's parking yet there's alternate side parking.

Board member: Is alternate side parking exempt from any streets? Or is it every street?

Unknown: Inaudible

Board member: That's what I thought. So that may be a question for next month then.

Susan Marteney: Brian, can you find out about that? It just seems really strange that it would be indicated that you can park on either side of the street or both sides of the street yet you can't.

Brian Hicks: I will look into it.

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### **108 South St. Proposed use not a listed use in zone.**

Chair: Next we have 108 South St. Will the presenter please approach? Please give your name and address for the record and tell us what you'd like to do.

Kevin Mendillo, attorney for 108 South St.: Good evening Board, Mr. Fusco. This is an application for a use variance for 108 South St. I know this matter has been before the Board a number of times in the past. It was a subject of litigation in County Supreme Court. To that extent I'd like to spare some of the details that have gone before this board a number of times already as I believe the Court has already found in 108 South St's. favor with respect to the four requisite elements required for a use variance. In our application we did submit the decision of the

court. As far as we're concerned the issue at this point in time is what uses are going to be approved or are we seeking at 108 South St. To that extent we have attached addendum B to our application in hopes that we can clarify and give the Board some definition as to what exactly we are attempting to do at this property. It's our opinion the uses we're proposing have been performed at the neighboring church for a number of years with the exception of housing of residents. What we're proposing to do really is no different than what has already been going on in this neighborhood for a substantial period of time. And I think at this point in time since what the court seemed to be concerned about was the specific uses that we're attempting to high light for the board we would like to answer questions from the Board that relate to what exactly we hope to do with the property should the Board be seeking further clarification.

Ed Darrow: It is my understanding from what we received back from the higher courts that this portion is to start over with you describing what you'd like to do and that we would look at it in its full context again. It's not for clarification.

Kevin Mendillo: To that extent we are seeking to offer affordable housing for veterans and individuals in need of affordable housing who would like to live in a drug free and alcohol free environment that will nurture their bodies, minds and spirits. As it currently stands there are 16 single rooms available for occupancy for these residents.

Andy Fusco: Excuse me but what is nurturing the mind, body and spirit mean?

Kevin Mendillo: Teach people to live ethically, morally; teaching them to live in a way that nurtures the mind. It teaches values and ethics and puts these people on the right path.

Andy Fusco: Who teaches that and how do they teach it? For these 16 residents, do you have classes in how to nurture the mind, body and spirit? How often are the classes? Who runs these classes? Are the people who run these classes paid people or unpaid people? Are the people who live there rent free or do they pay rent? I think, and I don't mean to be rude, but I think that's the kind of detail I gleaned from Judge Tadio's decision that she was looking for. Frankly I don't know what nurturing the mind, body and spirit means.

Kevin Mendillo: May I refer to one of my colleagues?

Edward Darrow: Yes. Please give your name and address for the record, ma'am.

Eileen Winter, Pastor of 1st Presbyterian Church: The number of programs includes Alcoholics Anonymous, Narcotics Anonymous available on the property to support these people. And the church across the street has such a program. There is a chapel on site which provides a spiritual space where people can go. There is a place where they can gather and watch t.v. so it's not just one room

but it's a place where they can give each other some mutual support as they deal with being poor or going through whatever situations they are. Right now I know some of the residents; one is an architect going through some hard times. Another is a chef going through some hard times. But that community support is available to them.

Ed Darrow: Is this available on a long term or short term basis?

Eileen Winter: As long as they live there and actually beyond because they can come back for some of these programs without having to live there.

Ed Darrow: So take the chef that's down on his luck, he could stay there for 2 or 3 years if he so chose.

Eileen Winter: As long as he's paying. He is a paying resident.

Ed Darrow: So that rules out transitional then, if you're going to allow them to stay long term.

Eileen Winter: I'm not a lawyer so that kind of language needs to go back to him.

Ed Darrow: Please go back to the services.

Eileen Winter: Okay. Then it comes individual. As you find what different people need you deal with them and help them connect with the services that are in our community. If there out on the streets they're sure not having access to our community services.

Andy Fusco: Reverend, what is a youth camp?

Eileen Winter: I believe the youth camp that's being referenced is a group of about 30 students that come together with professional leaders for 6 weeks and they come during the day and they work on drama, developing drama and songs and music and developing their art skills in the arts and then they do a program at the end of a certain time.

Andy Fusco: It says in the use chart you've come up with that the youth camp will be no more than ten times a year for dance, music, singing, acting and recreation. By ten times a year does that mean ten days? Does that mean ten seven week programs? What does it mean?

Eileen Winter: I didn't write that one so I don't know the answer to that.

Andy Fusco: Do you understand what I'm saying?

Eileen Winter: Yeah but I think part of the challenge with a property like the Case Mansion is that over time when it's such a large property, it's 36,000 square feet.

Andy Fusco: I understand that. I think it's an important distinction that my clients need to hear and that your tenant needs to hear. Certainly when one goes into an endeavor like this, certain things may work, certain things may not work. You may refine as you go along, do things that work more often, do things that didn't work less. I understand that and I believe your tenant did something very similar to that in the town of Sennett with the old tennis facility. He tried a bunch of different things until he finally got a bunch of things that did work and eliminated the ones that didn't. I'm not criticizing that. What I want to point out is that in Sennett it was in a commercial district and you're allowed to do that there. So you want to try and choose and you want to try and change things around and experiment until you finally get a formula of things that work, that's all well and good when you're properly zoned. The distinction here is that you're coming up with something in addition to a residential use in a residential zone and because it's a use variance that luxury of being able to try different things until we come up with something that works probably won't be allowed by law. So that the same type of thing he did in Sennett until he finally arrived at things that worked probably won't be allowed by the court to happen here. In other words I think what Judge Tadio was saying in her decision is that she wants a definitive statement of the activities. What time does the youth camp begin? What time does it end? If it's ten times a year is that ten 1-day sessions, is it ten 3-day sessions, is it 10 week-long sessions? I don't know what that means. Again, please don't misunderstand what I'm saying. I'm not here to criticize you; I'm not here to curry favor with either side of this dispute. I'm just trying to get to what I think the judge was talking about in her decision about the specificity of the uses that are proposed for the use variances. In fact two of my clients had problems with this the last time we were here and I'm going to rely on them to determine when it comes time to a vote whether this addendum B to Mr. Henty's application is specific enough to satisfy them. There seems to be some equivocation there and I don't necessarily know that we have the type of detail here that Judge Tadio was looking for.

Eileen Winter: I guess when I look at the history of the church and the property next door I see the same uses that have been in place for 67 years. And the uses in general that Mr. Henty has proposed they include housing, youth programming, offices, education and community gatherings. Those are the same categories that happen at our church.

Andy Fusco: And that was the same argument, Reverend, that I made in court on behalf of my client's decision the last time. I said basically almost verbatim what you just said. It didn't satisfy the court. The court is apparently looking for more detail. I think the residents are looking for more detail. Do these activities occur indoors or do they occur outdoors?

Eileen Winter: Over time they've occurred in both places.

Ed Darrow: I think that's the point we're trying to get to. Under housing, under youth programs, under community center we need specifics; specifics on the housing, specifics on the youth programs. When are they going to run? What kind of programs are they going to be? Are they going to be indoors? Are they going to be outdoors? Specifics on the community center. What hours is the community center going to be run? What is going to be allowed in the community center? That's what they're saying by specifics. The vocational training; when is the vocational training going to run? How long a period will it run for? These are all the specifics we must have in order to rehearse this. Otherwise we're not satisfying the justice's request.

Andy Fusco: Will things like to vocational training involve just the 16 people who live there or will you have vocational trainees from outside the community? One of the opponents handed out materials today and I'm not going to read all of it, I'm going to incorporate it into the record, one of the things it makes reference to is advertisements for wedding receptions and tents on the lawns of the grounds. I don't know whether that's true or not but I don't see that anywhere in exhibit B.

Eileen Winter: It's a community gathering.

Ed Darrow: That's exactly the specifics we would be looking for under community center. So in there you would need detail that you would allow wedding receptions at your community center which now brings up the next question; what other types of events would you allow at the community center? Would you allow bachelorette/bachelor parties? The answers really need to be given to what will be and what won't be allowed because otherwise it's wide open.

Scott Kilmer: The other thing I'd like to point out is to say that the vocational training along with the culinary arts, electrical, construction, painting, masonry and landscaping to just say that that's something that has occurred all along there as their attorney has just stated is not true. These are vocational training positions that have never been done on South St.

Eileen Winter: Can I say something that's just different than this? When Unity House told the church that it was moving it gave us 3 year's notice. We worked in 2 directions; we listed the property for sale and we worked to find a similar solution for the use of the property. It was bought from the Carmelite Fathers on the condition it be used for similar ministry. The church has been consistent with looking for 2 directions. The first year we worked with tourism, we worked with Barbara Bowen, people who knew the community, and for the first year we came up with no solution and no viable offers. I happened to meet Dan Larson and he suggested pulling together a large group of people from the whole community. So we used Dan Larson, Dean Carla-Deshaw and we had representatives from

the Chamber of Commerce, from the City, from the county, economic development, foundations, the museums, the arts, the social services, we had over 30 people trying to come up with a solution for the Case Mansion. They came up with one it would be wonderful if we could find a real wealthy buyer because it would bring money into the county and into the city or 2 there were a variety of options but nobody was ready to step up. Mr. Henty was our sole solution to the Case Mansion problem.

Andy Fusco: I hear you. I understand that and I think those 2 points you just raised go to the issue of uniqueness and lack of reasonable return on the investment. I know you're not a lawyer but those are 2 of the things for the Board to concern themselves with tonight. Judge Tadio has already answered those 2 issues in your favor. I don't know if you read her decisions or not but she has said that when it comes to things like self-created hardship, your opponents are saying you created this hardship yourself, you're saying no we didn't, the judge seems to side with you on that. Not seems to, sides with you on that. When you say "I have no other solution. Mr. Henty's my only solution" that goes to lack of reasonable return and the need for a use variance. And Judge Tadio has agreed with you on that. When you talk about getting the community together to try to solve this problem that goes to the uniqueness of this property and Judge Tadio sides with you on that. In fact in reading her decision it looks like she sides with you on every single issue in this case with the sole exception of specificity of uses. I'm just concerned, and again I'm trying to help you, believe me, I'm not trying to give you a hard time, I'm just concerned with whether the uses we have today are specific enough to satisfy her were this board to grant you belief. And Pastor you've been here for every one of these hearings, if you remember back 1 ½ years ago I had the same discussion with your tenant Mr. Henty before he was represented by his first attorney. I read all the stuff and I didn't quite understand with detail what it was he was trying to do. And then he hired Mr. Tehan and they came up with some detail, it satisfied some members of this Board, it didn't satisfy other members and more importantly it didn't satisfy Judge Tadio. I really don't know if you or Mr. Henty have hit it yet. I understand that you get it in your mind's eye, you're there every day, you've had this property next to your church for years, you're trying to figure out what to do with it, you knew what the prior tenant did with the property, I understand that you understand it. But Judge Tadio doesn't live next to this property, wasn't there when Unity House was there, doesn't really understand what had happened before and seems to be telling us I want detail, it's hard for me to understand what we're approving hear with this use variance. And that's almost a verbatim quote of her decision.

Ed Darrow: I don't think it would be out of line at this time to say perhaps you misunderstand what the justice was looking for with specifics on every use; hours of operation, whom, where, when, answering all those questions. I think it would be fair to say that perhaps it was misunderstood so therefore is your request to table so that you can you make more specific it would be understandable.

Andy Fusco: And what we can do so people don't have to keep coming back and forth if you want to take testimony.

Ed Darrow: The problem with taking testimony is we won't be able to take it on the specifics.

Eileen Winter: I'll turn it over to our attorney.

Ed Darrow: Yes, could you please give your name for the record again.

Kevin Mendillo: We would incline to table in order to take in the consideration of the Board and sit down and define this thing as strictly as we possibly can.

Andy Fusco: I appreciate that?

Ed Darrow: Do you understand what we're looking for and what the Supreme Court justice charged us with to find?

Kevin Mendillo: Absolutely. I think her decision, she doesn't lay out and spell it what exactly it is she's looking for, you kind of have to get inside her mind and make a determination what it is that's going to satisfy this thing if it goes back to a court and gets reviewed by a judge. Now that we have been able to hear feedback from the board I think we have a much clearer understanding but I think my client's hearing it for the first time and really hearing each and every thing. I think that really has put us on the right track and made us understand exactly how to break this thing down so it has more clarity.

Andy Fusco: I think one of the points, Kevin, if I may call you Kevin, is that one of the things your opponents is going to wonder about is what outdoor activities go on because outdoor activities are more closely scrutinized in a historic district than are indoor activities and whether this matter must be referred to the Historic Resources Review Board as you know and rad in the code is largely triggered on what, if anything, is going to go on outdoors. Changes or activities indoors under the City Code don't necessarily trigger Historic Review. Wedding receptions on the outside might.

Ed Darrow: Reverend, at this time your attorney has asked for us to consider to table so it would be best to wait.

Eileen Winter: This new lease, we've retained the land so Michael has rented the house and use of the land but the church has retained the use of the land so the outside is all church property. How does that affect this decision?

Andy Fusco: I don't know, I can't say at this particular juncture. But if what we're talking about as far as Mr. Henty's application are just things that go on inside the building then that becomes I think a little more clearer, it narrows the scope of

what we're being asked to decide and that the church may sponsor activities in a tents on the lawns that you are retaining may be a different questions than you're opponents are raising in tonight's paperwork to the court. We can't ask Mr. Henty to answer questions as to what the church proposes to do on the lawns if that's beyond his control. Understand that in this material Ms. Diviney just provided us with it looks like he's running the lawn, not you. Whatever it is let's just know what it is and we'll deal with it.

Eileen Winter: Unity House did, in its lease, lease the whole piece of property. We changed that for Ministro Ministries and Mr. Henty.

Andy Fusco: Okay, then that's important to know because I know that one of the concerns that I think that your opponents have are the lawns and the outdoor activities and I think that's a concern that I have as well given the fact that some people have urged me to refer this to the Historic Resources Review Board and as long as we're talking about activities within the Case Mansion, within the building, that probably isn't necessary.

Ed Darrow: So please be specific, even more so with the outdoor activities so that we can look at them properly.

Before I bring the motion to table to the Board I'd first like to speak to the neighbors who took the time to come down. I apologize that we're going to have to table this but it would be unfair to you and them to take your testimony at this time on matters that they haven't even presented yet.

Audience member: inaudible

Ed Darrow: Sir, just for a matter of record could you please approach. So it's on the record, that's all sir.

Richard Stankus, 119 South St.: I'm a member of the Historic Resources Review Board which is the review board which is sanctioned to review cases like Mr. Henty's appeal to the Zoning Board. For clarification tonight I would just simply like to read from the City Code so Mr. Henty and his attorney are aware this has to be presented before the Historic Resources Review Board for their recommendation before it can come back before Zoning. The City Code is clear I believe, and I'll just read.

Ed Darrow: Please understand what reading it in, it's part of our minutes and it is the City that decides, yes that absolutely needs to go to you people.

Richard Stankus: Thank you, if I may just continue. I appreciate your courtesy this evening. Reads City Code, Section 305-15: Jurisdiction and Authority of Historic Resources Review Board.

Andy Fusco: Doctor I guess that's a question of law we'll have to resolve, and perhaps Judge Tadio will have to resolve, because that's very different than Section 178 which seems to talk about alterations for exterior changes.

Richard Stankus: I can only read what the City Code states.

Andy Fusco: And I'm reading it as well. It says the Board shall not consider changes to interior spaces unless they are open to the public or affect the exterior appearance and it also says that, it defines alterations and it looks like structural change is what is meant by that, not activity within. I understand the language of 305 and the language of 178 may or may not be consistent with one another, that's a bridge we'll have to cross.

Ed Darrow: Thank you, doctor.

Richard Stankus: Are we allowed one or two simple comments because I would like to address some of the issues that were brought this evening. First very simply, the variance that they're requesting is not a similar variance in terms of use of Unity House. Unity House did not promote weddings, receptions, parties, birthday parties, which Mr. Henty has been doing for the last year he was granted this variance. The City Code allows that until this is redefined by the Zoning Board he's allowed to carry on his, what we think, are inappropriate activities until this is finally decided by the Board. Second, there have been offers to purchase the property, they were simply denied. Third, he has been housing convicted felons at that property and we have evidence to that fact. So they may talk about housing artists and down on their luck individuals, professional people, he doesn't of course bring up the convicted felons that have been housed at that facility since he's allowed those people to come in.

Susan Marteney: May I ask a question of you so that you may be able to answer this. This is a lot of meat that you all passed out and I've been trying to quickly read through it. One of the points that are made is that there were no written offers on this space made. And I guess that's something that either Eileen or someone from the congregation needs to respond to. Were there indeed written offers on the house?

Richard Stankus: That came after the fact. A year ago when I was speaking with the treasurer of Mr. Henty's Ministro Ministries, who by the way the three Board members; President, Vice-President and Secretary are Mr. Henty and his 2 business partners basically. So that's his ministry, himself and 2 business partners, not ministers. And when I spoke with the treasurer I offered as a neighborhood that we were interested in purchasing the building and she said the building is not up for purchase, we're simply interested in leasing the building. That was her comment to me. Now that again was a phone conversation, I don't have it recorded of course.

Susan Marteney: As I'm quickly reading one of the points is that there were no, during the time the building was for sale, there were not *written* offers and I'm wanting to clarify that for me. There were no written offers for the purchase of the Case Mention.

Richard Stankus: There were no written offers. That's correct. But at the same time when they speak to the fact that they consulted community leaders and other members of the community they never consulted any of the neighbors. None of the neighbors were consulted in terms of what our thoughts were in terms of the use of the property. So, again, that's why we're here tonight.

Ed Darrow: We understand why you're here. We want to try to get things proper for both sides. Thank you very much, doctor.

Chair will entertain a motion to table until our next meeting for more specifics.

Motion to table made by Scott Kilmer, seconded by . Motion carried unanimously.

This action is tabled until our next regular meeting next month, the fourth Monday of the month. Thank you very much and again I do apologize to everyone coming and not being heard yet.

If the Board could stay we have a bit of housekeeping.

Other Matters

Ed Darrow: Starting off under housekeeping?

Scott Kilmer: Where are the other members?

Ed Darrow: That's a great question. I was only notified by Matt that he would not be here. He's the only one.

Scott Kilmer: This is really important.

Ed Darrow: I never heard from Doug and I never heard from Debbie.

Scott Kilmer: Even if you've heard from him he's made four meetings in a year and a half. It's always something with that guy. I'd notify the mayor.

Ed Darrow: I understand completely because I'm just like you, I make the meetings yet we suffer when we don't have a full Board. I understand that completely. I've spoken with the Mayor concerning two of the three people because one has never actually been a problem. I guess there was some mix up

in when he started on the third but unfortunately that's where we're at other than drive to their house and pick them up.

Scott Kilmer: I know it's extrapolation but when you can't show up for the meetings you've got to wonder if, when you do show up, if you've read what you need to read, have you visited the properties.

Ed Darrow: Right, to be up to speed. I agree completely. I could not agree any more, trust me.

Scott Kilmer: We've had this conversation every nine months it seems like.

Ed Darrow: On to the next subject it's my sad duty to announce that Rick Tamburrino has tendered his resignation to the Board to the member due to his busyness. We understand completely.

Rick Tamburrino: Really my daughter-in-law is very ill.

Ed Darrow: I hope you can stay on through this.

Rick Tamburrino: My daughter-in-law is very, very ill. She's gone away for treatment and we have to watch the grandchildren for a month or two. So that's the main reason. My job of course is busy. When I come here I want to come here prepared, I visit the properties, I read the information and show up. I think maybe a leave of absence, maybe do that. Some other people have a leave of absence here. That's my main reason, my family issues.

Ed Darrow: I understand completely.

Susan Marteney: I would like it if you would take a leave of absence because you've been on the Board and have a history.

Rick Tamburrino: I enjoy serving the Board.

Scott Kilmer: Andy, that's not unheard of, a leave of absence?

Ed Darrow: 20 years on the Board and I've never heard of anyone taking it.

Andy Fusco: That would be the Mayor's call. Here's the problem with a leave, what if the temporary person who takes your place doesn't want to step down when you feel like coming back?

Susan Marteney: It's hard enough to find people to fill an honest to God vacancy let.

Ed Darrow: The replacement has to be a Republican.

Andy Fusco: Really? I don't know where we're going to find one of them. And here's another problem, we have to do SEQR over again.

Ed Darrow: Yes, so it's a whole new SEQR review. Are we going to be able to do a short form?

Andy Fusco: Not a long form. I'll do it; I'll walk us through it. I'll ask Kevin to put in all the material, what we'll do is take all the material we had last time and make it part of the record this time. Judge Tadio's decision is very confusing because she said they have to reapply but I find 5 or 6 things already decided.

Ed Darrow: I read it 4 or 5 times, what I took from it was, you're reapplying but be very, very specific on your uses and your activities in there.

Rich Tamburrino: What I'm thinking of is I got it, here's what they did at Unity House, this is the uses that Unity House had, these are the new uses, look at the Delta, look at the change. Then make a judgment, in my mind is the change significant? Does it have a detrimental effect on the neighborhood? That's what I'm looking at.

Ed Darrow: We actually shouldn't discuss this specific one too much because it may be construed as violating the open meeting law. That part has been tabled but if there are things you're looking for to bring out that's fine, so that I can make sure if the questions aren't asked I do ask them next time.

Scott Kilmer: Is it possible to have someone from Unity House come to answer questions?

Andy Fusco: We've got a lot of that in there. You and I have discussed this.

Scott Kilmer: A lot of it, people are confusing it.

Andy Fusco: The problem as I see it is that a lot of things at Unity House before a lot of these people moved into the neighborhood. It's clear to me from the materials we got the last time that as Unity House moved its campus less and less things took place at 108 South St. So that certain things perhaps the last director was unaware actually happened there did in fact happen. The last director was only there about eight years.

Scott Kilmer: No, she was just the director for the last eight years but she's been with Unity House her entire career. She says that they did job counseling but they never did vocational training. You know, aptitude testing, what are you interested in, what are your skill sets but the actual training never occurred there.

Andy Fusco: Either way it's an interesting issue, it's an interesting question. What we're not doing is grandfathering in activities that happened before. What we're doing now is granting a use variance for different new activities whether they occurred before or not. And I think specificity is the key.

Ed Darrow: One thing I'm interested in and I don't know if this would appeal to any others, I spoke with John Rossi about it and he told me to talk to you. I spoke with you about it and you're unsure. In cases past when there were problems say with traffic control or crime or if it involved law enforcement, Officer Weed would come and speak and give a presentation. Officer Gilfus has now taken over his position, would it be helpful to know that A, there hasn't been parking problems, crime problems or if there has been parking problems or a spike in crime or larcenies in the area, would this be helpful?

Rick Tamburrino: Are they using this property right now for all those uses described?

Ed Darrow: They legally can use it as they applied until it's readdressed so for the past year that it's been in the courts they've been able to use it. So we would actually have a gauge. Would you find it helpful if we asked Officer Gilfus to come?

Andy Fusco: Here's the thing. You're the jury. You're not the prosecutor or defense attorney. If Kevin Mendillo wishes to deduce testimony favorable from the Police that's his job. If Dr. Stankus or Ms. Diviney wish to deduce testimony they can.

Ed Darrow: What about in cases past when we've had Officer Weed speak? Was out of line then?

Andy Fusco: I don't know that it was out of line but I don't think we should be doing the attorney's job.

Ed Darrow: That's all that was going through my mind when he was saying felons. He's saying felons and I'm thinking, 'Are you saying there's more crime now?' That's what I was thinking.

Andy Fusco: And here's the thing about that. That's not really what Judge Tadio is asking us to do. Judge Tadio is asking us to come up with a specific set of uses.

Susan Marteney: No, she's not asking us, she's asking them. It's not our job to come up with that.

Rick Tamburrino: So they come up with a very specific set of rules, almost like a contract.

Susan Marteney: They have a contract in there.

Rick Tamburrino: A specific set of rules or a process or whatever you want to call it on how to run that. Then what is our job? Our job is to look at that and determine whether or not it affects the neighborhood. That's what we need, it seems pretty clear to me. We need a set of rules. It has to be almost iron clad. If there's any wiggle room there it could be abused.

Susan Marteney: Well already they have almost twice as many individuals living there as Unity House has. And that's a sticky point with the neighborhood.

Andy Fusco: Unity House had at least 16 at times didn't they?

Susan Marteney: That's not what they say. And they saying they have more now.

Ed Darrow: And that's the problem. There's contradicting testimony for us to figure out which we believe by what we know.

Andy Fusco: The fact they want to have 16 and Unity House had 8 or whatever number, that's not necessarily [inaudible]. We're not grandfathering in an existing use.

Susan Marteney: We're talking about comparing apples to oranges and we can't.

Scott Kilmer: They're always making parallels and comparisons and I think if they're going to bring that up, that they're not doing anything Unity House didn't do, then prove it.

Ed Darrow: Their comparisons aren't really as important as us looking at the specifics uses of that area, is it going to change the character of the neighborhood?

Scott Kilmer: I did that but the way they're trying to prove it is to draw parallels and those parallels may or may not exist.

Susan Marteney: Unity House took care of the people 24 hours a day who lived there. Mike does not do that. So they already nullified any comparison between the two.

Scott Kilmer: I completely understand that and that's why I mentioned there's never been electrical training in that building, or plumbing or contracting or masonry or any of that stuff. They had aptitude testing but they didn't carry the actual training out. And I think to draw that parallel it's saying 'Well, we're not doing anything that wasn't done before', yeah, you are.

Ed Darrow: I think we all know they are.

Andy Fusco: I think to a certain extent that's why I cut her off, it doesn't matter.

Ed Darrow: Why don't we have a motion to adjourn to our next meeting? We sleep on it and then hopefully they have a better presentation. Motion to adjourn?

So moved by Scott Kilmer, seconded by Rick Tamburrino. Motion carried unanimously.